

IT 05-3

Tax Type: Income Tax

Issue: Non-Filers (Income Tax)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

JOHN & JANE DOE,
Taxpayers

**No. 04-IT-0000
SSN: 000-00-0000
Tax yr.: 12/31/01**

**Charles E. McClellan
Administrative Law Judge**

RECOMMENDATION FOR DECISION

Appearances: Sean Cullinan, Special Assistant Attorney General, for the Illinois Department of Revenue (the “Department”); *John Doe, pro se.*

Synopsis:

This matter arose from a protest filed to a Notice of Deficiency issued on June 23, 2004 to Taxpayers for income tax owed for the year ended December 31, 2001. The amount of the deficiency was calculated on the basis of information the Department received from the Internal Revenue Service because the Department has no record of Taxpayers having filed an Illinois Individual Income Tax Return for the year 2001. An evidentiary hearing was held on February 15, 2005. Prior to the evidentiary hearing, Taxpayers submitted documents, including a copy of a tax return for 2001, on the basis of which the Department recalculated the amount of the deficiency and penalties.

I recommend that the Notice of Deficiency be adjusted to reflect the Department's recalculation of the deficiency and penalties, and that as so recalculated, it be made final.

Findings of Fact:

1. The Department has no record of Taxpayers having filed an Illinois Individual Income Tax Return for the year 2001, so using information it received from the Internal Revenue Service it calculated a deficiency and issued a Notice of Deficiency for the year 2001 to Taxpayers on June 23, 2004. Tr. p. 6, Dept. Ex. No. 1.
2. Taxpayers submitted a copy of an Illinois Individual Income Tax Return for the year 2001 with its protest. Tr. p. 21, Tp. Ex. No. 5.
3. The Department revised its calculation of the deficiency and penalties for 2001 on the basis of the documents submitted by Taxpayer. Tr. p. 8, Dept. Ex. No. 3.

Conclusions of Law:

Generally, the Illinois Income Tax Act¹ requires each resident of Illinois to file an annual income tax return if that person files a federal income tax return. 35 ILCS 5/502(a). The Department's regulations require that individuals file their annual income tax returns by the 15th day of the fourth month following the close of the individual's or individuals' (in the case of married persons) taxable year. 86 IL. Admin. Code § 100.5000(a)(1). For most individuals, that date is April 15th each year.

The Department has no record of Taxpayers having filed timely an income tax return for the 2001 year. The Act provides penalties for failure to timely file annual income tax returns. The first penalty is a 2% penalty for failure to timely file the tax

¹ All statutory references are to 35 ILCS 5/101, *et seq.*, the Illinois Income Tax Act ("IITA" or the "Act").

return. 35 ILCS 735/3-3(a-5). The second penalty is \$250 penalty for failure to file a tax return within 30 days of being notified by the Department of non-filing. 35 ILCS 735/3(a-10). The third penalty, which requires doubling the other penalties, applies if the liability was not paid during the amnesty period that ran from October 1, 2003 through November 17, 2003. 35 ILCS 521/10 f (b). Taxpayers' situation falls within all three of these provisions, so the Department assessed all three penalties.

The Department's *prima facie* case is established by the introduction into evidence of copies of its records under the certificate of the Director. 35 ILCS 5/914, *Balla v. Dept. of Revenue*, 96 Ill. App.3d 293 (1st Dist. 1981). In this case the Department's *prima facie* case was established when it introduced the Notice of Deficiency under the certificate of the Director showing the calculation of the deficiency. A taxpayer's testimony alone will not overcome the Department's *prima facie* case. *Central Furniture Mart v. Johnson*, 157 Ill. App. 3d 907 (1st Dist. 1987). To overcome the Department's *prima facie* case the taxpayer must present consistent and probable evidence identified with its books and records. *Id. Masini v. Dept. of Revenue*, 60 Ill.App.3d 11,15 (1st Dist. 1978). "Evidence must be presented which is consistent, probable, and identified with its books and records." *A.R. Barnes & Co. v. Dept. of Revenue*, 173 Ill.App.3d 826, 833—34 (1st Dist. 1988).

I find that Taxpayers have failed to overcome the Department's *prima facie* case.

Taxpayers admitted at the evidentiary hearing that they could not prove that they filed their Illinois Income Tax Return for the year 2001. They asserted that they had a refund coming, so there was no reason for them not to file. Although that argument is

persuasive, it does not overcome the fact that they did not offer into evidence any proof that they filed their tax return as required by statute.

Taxpayers also argued that they did not know of the Department's assertion of delinquency until they received the Notice of Deficiency that they protested. They attributed that to what they described as chaotic mail delivery conditions at the building they lived in during 2001 and the first six months of 2002.

None of these arguments, without supporting documentary evidence, are sufficient to overcome the Department's *prima facie* case. Therefore, for the reasons set forth above, I recommend that the Notice of Deficiency be adjusted to reflect the recalculations made by the Department, and that as so adjusted that it be made final.

ENTER: March 30, 2005

Charles E. McClellan
Administrative Law Judge